

Exhibit

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN KELSEY and
JOSHUA SMITH,

Defendants.

No. 3:21-cr-00264

DECLARATION OF BRIAN KELSEY

I, Brian Kelsey, the undersigned “Declarant,” am over eighteen (18) years of age. I submit this Declaration pursuant to 28 U.S.C. § 1746 and state as follows:

1. My father, Robert C. Kelsey, Sr. (“Bob Kelsey”), was diagnosed with terminal, inoperable pancreatic cancer in and around March 2022.
2. Bob Kelsey underwent chemotherapy in an effort to shrink his pancreatic tumor through August 2022, at which time he was forced to stop because his body could take no more.
3. In August 2022, Bob Kelsey was hospitalized for three weeks, and doctors gave him little prognosis for survival.
4. After being in the hospital roughly three weeks, Bob Kelsey found the will to recover enough to be released from the hospital into home hospice care.
5. Between August 2022 and February 2023, Bob Kelsey was imminently close to death, which could have come any day. During this time, I called my father

on average one to three times a day to check on whether he was still living, and I told him “Goodbye” in person, thinking I would never see him again, on five separate occasions.

6. Bob Kelsey died February 2, 2023. His funeral was February 6, 2023.

7. On September 10, 2022, my wife bore twin sons.

8. Two newborns mean twice the crying, twice the diaper changes, and twice the feedings, and as a twin parent, I feel as if one of these activities is constantly occurring.

9. During their first few months of life, my sons required feedings every three hours, including through the night, and my wife and I shared this duty. We were also forced to hire extra help during the initial months.

10. Many days, I feel like my daughter, who puts her fingers in her ears and yells, “Please make him stop crying!”

11. While my daughter is a sweet girl, she has had difficulty adjusting from being the center of attention to now sharing the limelight with her brothers, and her frustration has made parenting her more difficult and time consuming.

12. I continue to have many nights in which my sleep is interrupted once or multiple times by my newborn sons or by my three-year-old daughter, but thankfully, February 2023 is the first month in which both my sons have slept through the night.

13. When asked how he was surviving longer than his doctors predicted, Bob Kelsey repeatedly told others that he was living for two things: to hold his twin grandsons and to see his son acquitted.

14. On November 18, 2022, I witnessed Bob Kelsey, who was also a twin brother, hold his twin grandsons in his arms for the first time. He cried. He told me it brought him tears of joy to be holding them and tears of sadness to know that he would never see them grow up.

15. The combination of caring for two newborns, caring for a three-year-old, being deprived of sleep, constantly worrying that each day may bring news of my dad's death, sharing in my mom's and my wife's burdens, and being faced with a plea deal with an expiration in less than two days contributed to my hastily accepting the agreement with unsure heart and confused mind.

16. The emotion of losing my father has entered a new stage. I no longer experience the emotional strain of not knowing whether each day will be his last. Now, I miss him and am sad that I will never see him again on this Earth, but I am grateful that he is no longer suffering and hopeful of reuniting with him in heaven.

17. After 18 consecutive years serving honorably in the Tennessee General Assembly, I decided not to run for reelection to the state Senate in 2022 because my wife was expecting twins, and I did not want to subject my family to the negative campaigning that was sure to come from my criminal indictment in this case.

18. Immediately after I entered the notice to change my plea, I lost my second and higher paying occupation and was forced to resign from my position of Managing Attorney at my law firm, Liberty Justice Center.

19. After I entered the plea agreement in this case and reported it to the Tennessee Board of Professional Responsibility, the board suspended my license to practice law, pending a future due process hearing and final determination.

20. Now, my wife is the sole income earner for our family, and I take care of our twin sons full-time.

21. On January 11, 2023, the State of Tennessee Benefits Administration terminated my and my family's health insurance effective February 1, 2023, citing my November 22, 2022 plea agreement.

22. This determination also may cause me to lose the state pension I earned for 18 years of public service in the legislature.

23. In December 2022, Citibank abruptly closed my credit card account, and in a letter dated January 13, 2023, it informed me that the reason for doing so was that I "recently pleaded guilty to charges including conspiracy to defraud the United States."

24. Also in January 2023, I was told that Regions Bank informed my mother that it was closing her and my father's primary checking account, which they had held for over forty-five years, because I was given signing privileges on it last year to help with their finances during my dad's illness and because I had recently entered the plea agreement in this case.

25. During the height of my dad's illness, my mother was forced to make repeated in-person trips to Regions Bank over a period of weeks, and I helped walk her through a process to convince the bank not to close my parents' account but instead to remove my name from having signing privileges. To accomplish this last-ditch compromise, the local branch manager literally came into my parents' home while I listened on the phone. My father was on his death bed and would die only days later. Instead of being surrounded by peaceful, loving family and friends, he had a pen shoved into his hand and was forced to sign a document removing his son's signing privileges from his checking account because he was a felon. I felt tremendous guilt for causing this unpleasant scene to befall my father in his last days and for causing this emotional strife for my mom.

26. No one ever informed me that pleading guilty to 18 U.S.C. § 371 would cause me to lose the ability utilize the private banking system in the United States.

27. Other than speeding tickets, I have had no experience with the criminal justice system as a defendant. As an attorney, I exclusively practiced civil law. Prior to the days leading up to the plea agreement in this case, I was unfamiliar with the federal criminal sentencing guidelines and the process of entering a plea agreement with no agreement as to what the sentence would be and without which the government would claim to seek a vastly enhanced "trial penalty" for a defendant wishing to exercise his constitutional rights.

28. The possibility of hastily agreeing to facts which cannot, as a matter of law, constitute a criminal offense causes me tremendous concern.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2023.



Brian Kelsey

Respectfully submitted,

s/ David A. Warrington

David A. Warrington, *pro hac vice*

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Declaration of Brian Kelsey* has been electronically delivered via the Court's electronic filing system on this the 16th day of March 2023 to:

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